IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH;

AT HYDERABAD

PRESENT

THE HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 4404 OF 1994

DATE: 1ST FEBRUARY, 2006.

Between

G.Sathi Reddy and others

…..Petitioners

and

The President, Primary Agriculture Coop. Society and ors.

…Respondents.
HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 4404 OF 1994

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ORDER:

This Writ Petition is filed to declare the auction proceedings held by the second and third respondents in Execution Petition No.10/1988-89/A3, dated 31-10-1988 , which was confirmed on 16-1-1993, as void and illegal.

House property bearing No.1-12, covered by an area of 916 square yards, situated in Chinnakandukur village of Yadagirigutta mandal, Nalgonda district, was originally held by one Sri G.Seetha Reddy, who is the father of the petitioners and fifth respondent. Fifth respondent was elected as President o f the Primary Agriculture Cooperative Society, Chinnakandukur, during the year 1982 and, on the allegation that he misappropriated the funds of the society, surcharge proceedings were initiated under Section 60 of the AP Cooperative Societies Act, 1964 and final orders were passed . To execute the said order passed under Section 60 of the Act, steps were taken by filing execution petition under Rule 52 of the AP Cooperative Societies Rules, 1964, and, after following the necessary formalities the above said property was put to auction and society itself has purchased the said property in the auction.

It is the case of the petitioners, that the said property was originally held by Sri Sita Reddy, who bequeathed to his wife, Smt. Ramulamma, who subsequently died on 17-2-1994, leaving petitioners and fifth respondent. It is their case, that the fifth respondent was not the owner of the entire property, and conducting auction of the entire property and selling the same to execute the surcharge order passed against the fifth respondent, is illegal.

If the petitioners are aggrieved by auction sale proceedings, there is mechanism provided under Rule 52 of the AP Cooperative Societies Rules, 1964, to set aside the same. Under Rule 52 (13)(i) of the AP Cooperative Societies Rules, 1964, if any person having any interest or right in the property, which is sold in auction, he can make application to set aside the sale. But, in the instant case, no such application is filed. In this petition under Article 226 of the Constitution of India, it is not possible to enquire into, whether the property was held by the fifth respondent, or, the petitioners are also having interest in the property. The same is a matter, which is to be enquired into, after recording necessary evidence, which cannot be done in this petition. In that view of the matter, the auction conducted and sale of the property cannot be declared as illegal in this writ petition filed under Article 226 of the Constitution of India. As such, no relief can be granted. But, however, it is open for the petitioners to file appropriate application as contemplated under Rule 52 (13)(i) of the AP Cooperative Societies Rules, 1964 before the competent authority within a

period of six weeks from the date of receipt of this order. If such application is filed, the competent authority shall enquire into and pass appropriate orders, in accordance with law, after giving notice to the affected parties. This Court at the stage of admission has granted interim order on 18-3-1994 and all along the said interim order continued. In that view of the matter, there shall be status quo as on today, for a period of six weeks and it is open for the petitioners to seek appropriate interim orders from the competent authority also.

Subject to the above directions, the Writ Petition is disposed of. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 01-02-2006.

Msnr